



STAFF REPORT

DATE: October 4, 2011
TO: HONORABLE MAYOR AND CITY COUNCIL
FROM: ROD FOSTER, CITY MANAGER
PREPARED BY: STEVE WARD, INTERIM POLICE CHIEF
SUBJECT: APPROVE AND ADOPT AN AGREEMENT WITH THE CITY OF SAN BERNARDINO DEPARTMENT OF ANIMAL CONTROL FOR ANIMAL HOUSING SERVICES.

RECOMMENDED ACTION

It is recommended that the City Council authorize execution of a Professional Services Agreement with the City of San Bernardino Department of Animal Control for animal housing services.

GOAL STATEMENT

This item supports the Council's goal of ensuring a safe community.

BACKGROUND

Historically, the City of Colton has provided its own animal control services and contracted with the City of San Bernardino Department of Animal Control for animal housing services. The City of San Bernardino provides for the sheltering of animals captured or received by the City of Colton Animal Control Officer.

ISSUES/ANALYSIS

The agreement with City of San Bernardino Department of Animal Control for animal housing services expired June 30, 2011. The City of San Bernardino has provided a new agreement, with a 3-year term limit, which includes a previously agreed to 15% increase, to be used for animal shelter improvements. The previous agreement amounted to a base payment of \$158,796 plus the 15% shelter improvement fee of \$23,820, for a total of \$182,616, annually. The new agreement increases the base amount to \$175,514, plus the 15% shelter improvement fee of \$30,973, for an annual total of \$206,487. The increase in the proposal amounts to an additional \$23,871 above the previous animal housing agreement. In short, the total contract price has been increased to \$206,487, from the previous contract amount of \$182,616.

The City of San Bernardino also proposed providing all animal services to the City of Colton at a cost of nearly \$490,000 annually. The proposed proposal would include an additional Animal Control Officer. Yet, its total cost is approximately \$200,000 more than our current budget for

these services. As such, staff is exploring the possibility of forming a Joint Power Authority with the City of Fontana and other neighboring cities in order to save scarce budget dollars.

FISCAL IMPACTS

The additional cost of \$23,871 will be offset by other savings in the Departmental budget. As such, no budget adjustment is necessary.

ALTERNATIVES

1. Provide alternative direction to staff for animal housing services.

ATTACHMENTS

1. Professional Services Agreement with the City of San Bernardino Department of Animal Control for animal housing services.
2. Professional Services Agreement with the City of San Bernardino Department of Animal Control for animal control services

ANIMAL HOUSING SERVICES AGREEMENT BETWEEN THE CITY OF
COLTON AND THE CITY OF SAN BERNARDINO

THIS AGREEMENT ("Agreement") is made this 1st day of July 2011, between the City of Colton, a municipal corporation (hereinafter "Colton") and the City of San Bernardino, a municipal corporation (hereinafter "San Bernardino"). Colton and San Bernardino are herein referred to individually as a "Party" and collectively as the "Parties."

WHEREAS, Colton desires to provide for its citizens an animal housing service; and

WHEREAS, San Bernardino has the knowledge, skills, resources, and experience that qualify it to provide those animal housing services for Colton;

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL PROMISES, COVENANTS, AND CONDITIONS CONTAINED HEREIN, THE PARTIES MUTUALLY AGREE THAT:

1. Scope of Services. San Bernardino will impound, care for and dispose of animals delivered to the San Bernardino Animal Shelter by residents of, or official representatives of, Colton according to the provisions of this Agreement.
2. Impounding and Disposal of Animals. San Bernardino shall, through its Animal Control Department, accept, impound and dispose of dogs, cats or other animals, which are delivered to the San Bernardino Animal Shelter by an agent, officer, employee or resident of Colton. San Bernardino shall, for and on behalf of Colton, pursuant to applicable laws, release to owner, adopt, humanely destroy, or otherwise dispose of all animals received. No domesticated animal shall be disposed of without an attempt to notify the owner, if the owner is known by San Bernardino. *San Bernardino shall not provide for emergency veterinary care. Colton is responsible for transporting and seeking appropriate emergency treatment for ill and/or injured animals.*
3. Holding Periods. No dog, cat, or other domesticated animal shall be disposed of before the time allotted for under state law. After the required holding period, the animal becomes the property of San Bernardino and San Bernardino is authorized to dispose of the animal in any manner permitted by law. Animals requested by Colton to be held longer than required by law, other than rabies quarantine, shall additionally be charged the prevailing Daily Board Fee, as set by City of San Bernardino Resolution (such instances shall include, but are not limited to: animals held as "evidence" in cruelty or other court cases). Rabies quarantined animals will be held for ten (10) days from the date of the bite with no additional charge to Colton.
4. Warranty of Lawful Apprehension. Colton warrants to San Bernardino that all animals impounded by its agents, employees or other authorized representatives have been apprehended and impounded pursuant to existing laws.

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COLTON AND THE CITY OF SAN BERNARDINO

5. Consideration.

- a. Colton shall pay to San Bernardino \$175,514 annually for animal housing, and a fifteen-percent fee of \$30,973 for animal shelter improvements for the total of \$206,487 annually. San Bernardino shall present an invoice on or before the tenth day of each month for the amount due of \$17,207.25. Colton shall pay said invoice not later than the last day of the month in which billed.
- b. Colton shall promptly review invoices and notify San Bernardino of any objection thereto; absent such objection in writing within ten (10) days of the date of the invoice, the invoice shall be deemed proper and acceptable.
- c. If Colton fails to pay San Bernardino within thirty (30) days after the invoice is submitted, Colton agrees that San Bernardino shall have the right, after written notice to Colton, to consider such default in payment a material breach of this entire agreement. Colton shall have ten (10) days following the date of such written notice within which to correct such breach. If Colton continues to fail to make payment, the duties, obligations and responsibilities of San Bernardino under this agreement are terminated. Such termination by San Bernardino does not release Colton from the obligation to pay San Bernardino for services rendered according to Section 5(a) above.
- d. Colton may withhold payment of any disputed sums until satisfaction of the dispute with respect to such payment. Colton must give written notice to San Bernardino within ten (10) days of the date of the disputed invoice if Colton is disputing any sum under sub-paragraph 5(a). Such withholdings shall not be deemed to constitute a failure to pay as that term is used in sub-paragraph 5(c). San Bernardino shall not discontinue its service for a period of thirty (30) days from the date of the withholdings, as a result of such withholding. San Bernardino shall have the right of appeal to the Mayor and City Council of Colton with respect to such disputed sums. The determination of the Mayor and City Council of Colton with respect to such matter shall be final. San Bernardino shall be entitled to receive interest on any withheld sums at the rate of seven percent (7%) simple per annum from the date of withholding of any amounts found to be improperly withheld. For any disputed sum, either party may attempt to collect a debt through a civil proceeding.
- e. The compensation fee or payment amount for services rendered herein shall be adjusted upward on an annual basis not less than 3% and not more than 5% and shall be based on the Bureau of Labor Statistics' CPI for the Western Region of the United States.

6. Deputization. San Bernardino animal control officers, agents or employees shall be authorized to collect Colton's license, apprehension, and related penalty fees at the Animal Shelter, as directed by Colton, for all animals received under this agreement. San Bernardino shall provide all animal impound records and release forms to Colton as requested.

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COLTON AND THE CITY OF SAN BERNARDINO

7. Funds Collected by San Bernardino. Apprehension Fees, license deposits and penalties collected by San Bernardino for Colton in connection with this agreement shall be paid to Colton on or before the twentieth day of each month following collection. Fees for adoption, micro-chipping, daily board, vaccination, euthanasia and release shall be retained by San Bernardino. Rabies vaccination deposits shall be refunded to the depositor upon presentation of proof of vaccination.
8. Colton's Indemnification. Colton agrees and promises to indemnify, defend, and hold harmless San Bernardino, its officers, employees and agents, from and against any and all actions, causes of action, claims, demands, lawsuits, costs and expenses, and liability for damages to persons or property that may be asserted or claimed by any person, firm, entity, corporation, political subdivision, or other organizations arising out of, or in connection with, the performance of this Agreement, excluding such actions, claims, demands, lawsuits and liability for damages to persons or property arising from the negligence or willful misconduct of San Bernardino, its officers, employees or agents. Said sums shall include, in the event of legal action, court costs, expenses of litigation, and reasonable attorney's fees. The costs, salary, and expenses of the San Bernardino City Attorney and members of his or her office in enforcing this Agreement on behalf of San Bernardino shall be considered as "attorney's fees" for the purposes of this paragraph.
9. San Bernardino's Indemnification. San Bernardino agrees and promises to indemnify, defend, and hold harmless Colton, its officers, employees and agents, from and against any and all actions, causes of action, claims, demands, lawsuits, costs and expenses, and liability for damages to persons or property that may be asserted or claimed by any person, firm, entity, corporation, political subdivision, or other organizations arising out of, or in connection with, the performance of this Agreement, excluding such actions, claims, demands, lawsuits and liability for damages to persons or property arising from the negligence or willful misconduct of Colton, its officers, employees or agents.
10. Warranty. San Bernardino makes no warranty, either express or implied, as to its findings, recommendations, plans, reports, professional advice or other work except that the work will be performed in accordance with generally accepted standards of practice in effect at the time of such performance.
11. Worker's Compensation Insurance. San Bernardino is permissibly self-insured under the Worker's Compensation laws of the State of California and will provide worker's compensation coverage for its employees and will ensure that the employees of any of its subcontractors are covered by worker's compensation insurance in an amount and form to meet all applicable requirements of the laws of the State of California. Colton shall not provide worker's compensation insurance for any San Bernardino employee, agent or subcontractor operating under the terms of this Agreement under any circumstances whatsoever. Furthermore, notwithstanding any other provision set forth herein, Colton

ANIMAL HOUSING SERVICES AGREEMENT BETWEEN THE CITY OF
COLTON AND THE CITY OF SAN BERNARDINO

shall not indemnify, defend or hold harmless San Bernardino, its officers, employees, agents or subcontractors for worker's compensation claims.

12. Prohibition Against Transfers. San Bernardino shall not assign, sublease, hypothecate or transfer this Agreement or any interest therein directly or indirectly, by operation of law or otherwise without the prior written consent of Colton. Any attempt to do so without said consent shall be null and void, and any assignee, sublessee, hypothecatee or transferee shall acquire no right or interest by reason of such attempted assignment, sublease, hypothecation or transfer.
13. Anti-Discrimination. San Bernardino certifies and agrees that all persons employed by San Bernardino are and will be treated equally by San Bernardino without regard to or because of race, religion, ancestry, national origin, handicap, or sex and in compliance with State and Federal Anti-Discrimination laws.
14. Independent Contractor. San Bernardino shall be an independent contractor and not an employee, nor shall any of San Bernardino's employees, agents or subcontractors operating under this Agreement be an employee of Colton.
15. Conflict of Interest.
 - (a) San Bernardino or its employees may be subject to the provisions of the California Political Reform Act of 1974 (the "Act"), which (1) requires such persons to disclose financial interests that may be materially affected by the work performed under this Agreement, and (2) prohibits such persons from making or participating in making decisions that will foreseeably financially affect such interest.
 - (b) San Bernardino shall conform to all requirements of the Act. Failure to do so constitutes a material breach and is grounds for termination of the Agreement by Colton.
16. Term. The term of this Agreement shall be for three (3) years, commencing on July 1, 2011, and terminating on June 30, 2014.

In the event services rendered continue beyond the contract expiration date without an executed Agreement and the parties are desirous to continue services, the compensation fee shall be charged on a month-to-month basis at the higher rate of 10% above the existing compensation fee for services rendered herein until a new Agreement has been executed by the Parties. This provision does not apply if the agreement has expired as a consequence of San Bernardino's delay in establishing a new Agreement.

This agreement may be terminated by either party upon 30 days written notice. In the event of termination, San Bernardino shall be paid for the work performed under this agreement to the date of termination.

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COLTON AND THE CITY OF SAN BERNARDINO

17. Invalidation. In the event any provision of this Agreement is held to be invalid and unenforceable, the remaining provisions of this Agreement shall remain valid and binding on the Parties thereto.
18. Notices. A notice required or desired to be given pursuant to this Agreement shall be given in writing and sent by certified mail, return receipt requested, addressed as follows:

| Colton | San Bernardino |
|--|---|
| Lt Chuck deDianous City of Colton Police Department 650 N. La Cadena Dr. Colton, CA 92324 (909) 357-9957 | Capt. Burguan City of San Bernardino Police Department 710 North "D" Street San Bernardino, CA 92401 (909) 384-5600 |

Any notice so given shall be considered served on the other Party three (3) days after the date of mailing. The address for the notice may be changed by giving written notice of such change pursuant to this paragraph.

19. Attorney Fees.
In any litigation relating to this Agreement, the prevailing Party shall be entitled to reasonable attorney fees. The costs, salary and expenses of any in-house counsel and/or City Attorney and members of his/her office shall be considered as "attorney fees" for the purpose of this paragraph.
20. Entire Agreement.
This contract constitutes the entire Agreement between Colton and San Bernardino and may be modified only by further written agreement between the Parties through their respective authorized bodies.
21. Construction of Provisions and Titles.
All titles or subtitles appearing in this Agreement have been inserted for convenience and shall not be deemed to affect the meaning or construction of any of the terms or provisions of such Agreement.

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ANIMAL HOUSING SERVICES AGREEMENT BETWEEN THE CITY OF
COLTON AND THE CITY OF SAN BERNARDINO

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IN WITNESS WHEREOF, the Parties hereto have accepted, made and executed this Agreement upon the terms, conditions and provisions above stated, on the day and year set forth above.

CITY OF COLTON
A Municipal Corporation

By: _____
Rod Foster, City Manager

CITY OF SAN BERNARDINO
A Municipal Corporation

By: _____
Charles McNeeley, City Manager

Attest:

City Clerk

Attest:

City Clerk

Approved as to Form:

City Attorney

Approved as to Form:

James F. Penman, City Attorney

**Animal Control Services Proposal
Between the City of Colton
and
the City of San Bernardino**

THIS PROPOSAL ("Proposal") is made between the City of Colton, a municipal corporation (hereinafter "Colton") and the City of San Bernardino, a municipal corporation, (hereinafter "San Bernardino"). Colton and San Bernardino are herein referred to individually as a "Party" and collectively as the "Parties."

WHEREAS, Colton desires to provide for a citywide Animal Care and Control Program, and

WHEREAS, if Colton accepts the proposal, the parties will memorialize their Agreement in a separate contractual document.

WHEREAS, San Bernardino has the knowledge, skills, resources, and experience that qualify it to conduct a citywide Animal Care and Control Program.

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL PROMISES, COVENANTS, AND CONDITIONS CONTAINED HEREIN, THE PARTIES MUTUALLY AGREE THAT:

1. Scope of Services

- (a) San Bernardino will perform certain services as described in the Scope of Services attached as **Exhibit 1** (hereafter, the Scope of Services attached as **Exhibit 1** shall be referred to as "**Exhibit 1**"), which by this reference, is incorporated herein.
- (b) Colton, with the express written consent of San Bernardino, may modify the services listed in **Exhibit 1** to be performed under this Agreement.

2. Consideration.

- (a) Colton shall pay San Bernardino a Service Fee of \$421,964 for animal care and control services. Additionally, Colton shall pay a Shelter Improvement Fee equal to 15% or \$63,940 of the Service Fee for animal shelter improvements. The total contract amount is equal to the sum of the Service Fee and Shelter Improvement Fee, or \$485,904 each fiscal year for the period July 1, 2011 through June 30, 2014 for services and work products as defined in **Exhibit 1**. All license fees that are collected pursuant to this agreement will be returned to Colton.

- (b) Colton shall promptly review invoices and notify San Bernardino of any objection thereto. Absent such objection in writing within ten (10) calendar days following the date of the invoice, the invoice shall be deemed proper and acceptable.
- (c) If Colton fails to pay San Bernardino within thirty (30) calendar days after the invoice is submitted, Colton agrees that San Bernardino shall have the right, without further notice, to treat such default in payment as a material breach of this entire Agreement. Upon occurrence of such material breach, the duties, obligations and responsibilities of San Bernardino under this Agreement shall be immediately terminated by San Bernardino. The time for payment may be extended, or termination waived, upon written agreement of the parties. Such termination does not release Colton from the obligation to pay San Bernardino for services rendered according to Section 2 (a) above.
- (d) Colton may withhold payment of any disputed sums until satisfaction of a bona fide dispute with respect to such payment. Colton must give written notice to San Bernardino within ten (10) calendar days following the date of the disputed invoice if Colton is disputing any sum claimed to be due under sub-paragraph (a). Such withholdings shall not be deemed to constitute a failure to pay as that term is used in sub-paragraph 2 (c).
- (e) San Bernardino shall not discontinue its service as a result of such withholding without first providing thirty (30) calendar days written notice of intent to discontinue service.
- (f) Before exercise of any other remedy, San Bernardino shall appeal, within thirty (30) calendar days of Colton's written notice of dispute, to the City Manager (or his/her designee) of Colton with respect to any disputed sums.
- (g) The City Manager (or his/her designee) of Colton shall have thirty (30) calendar days to send written notice of his or her determination to San Bernardino with respect to the disputed sum. The determination of the City Manager (or his/her designee) with respect to such matter shall be the final administrative appeal.
- (h) San Bernardino shall be entitled to receive interest on any withheld sums at the rate of seven percent (7%) simple per annum from the date of withholding of any amounts found to be improperly withheld. For any disputed sums under this Agreement, either party may resort to a civil proceeding after the conclusion of the procedures set forth herein.

- (i) The compensation fee or payment amount for services rendered herein shall be adjusted upward on an annual basis not less than 3% and not more than 5% and shall be based on the Bureau of Labor Statistics' CPI for the Western Region of the United States.

3. Personnel

San Bernardino represents that it possesses the professional and technical personnel required to perform the services required by this Agreement. San Bernardino shall not subcontract for any additional personnel without prior written approval of Colton

4. Personnel Substitutions

All services described in **Exhibit 1** shall be performed by San Bernardino or under its supervision. San Bernardino agrees that all personnel engaged in performing the services are fully qualified and are authorized or permitted under state and local law to perform such services.

5. Termination

- (a) If either Party fails to perform any duties or obligations imposed by the Agreement or said failure continues for sixty (60) calendar days after written notification by the other, then the Agreement will be in total breach and the non-breaching Party may terminate the Agreement immediately thereafter.
- (b) Either Party at any time may terminate the Agreement without cause upon the giving of ninety (90) calendar days prior written notice to the other party of such intent to terminate. Either Party must give at least 90 calendar days prior written notice of intent not to renew the Agreement. In such event, San Bernardino shall be paid for the work performed under the Agreement to date of termination.
- (c) San Bernardino further agrees to give its support in the transfer of the work to any other consultant or service provider employed by Colton following termination hereunder and to participate in such reasonable number of meetings at no cost to Colton as shall be deemed necessary by Colton to effectively accomplish such transfer.

6. Cooperation

Colton agrees to cooperate with San Bernardino in San Bernardino's

performance of duties under the Agreement.

7. Colton's Responsibilities

Colton shall furnish to San Bernardino maps, existing studies, ordinances, data and other existing information and materials in Colton's possession, custody or control as shall be determined necessary by San Bernardino for it to complete the work contemplated by this Agreement. Colton agrees to provide all such materials in a timely manner so as not to cause delays in San Bernardino's work schedule. All materials and equipment purchased for or provided to San Bernardino by Colton shall remain the property of Colton and shall be returned within ten (10) days of Colton's written request to San Bernardino. Colton hereby authorizes San Bernardino personnel to enforce Colton's municipal code as it pertains to animals. Colton shall take all necessary actions to deputize or otherwise make San Bernardino's actions to enforce Colton's municipal code, including, but not limited to, adopting an ordinance or resolution bestowing the authority to enforce Colton's municipal code upon San Bernardino personnel.

8. Colton's Indemnification

Colton agrees and promises to indemnify, defend and hold harmless San Bernardino, its officers, elected officials, employees and agents, from and against all actions, causes of action, claims, demands, lawsuits, costs and expenses and liability for damages to persons or property that may be asserted or claimed by any person, firm, entity, corporation, political subdivision, or other organizations arising out of, or in connection with, the performance of this Agreement, excluding such actions, claims demands, lawsuits and liability for damages to persons or property arising from gross or willful misconduct of San Bernardino, its officers, employees or agents. Said sums shall include, in the event of legal action, court costs, expenses of litigation, and reasonable attorney's fees. The costs, salary and expenses of any retained counsel and/or the City Attorney and members of his/her office shall be considered as "attorney fees" for the purpose of this paragraph.

9. San Bernardino's Indemnification

San Bernardino agrees and promises to indemnify, defend and hold harmless Colton, its officers, elected officials, employees and agents, from and against all actions, causes of action, claims, demands, lawsuits, costs and expenses and liability for damages to persons or property that may be asserted or claimed by any person, firm, entity, corporation, political subdivision, or other organizations arising out of, or in connection with, the performance of this Agreement, excluding such actions, claims demands, lawsuits and liability for damages to persons or property arising from gross or willful misconduct of Colton, its officers,

employees or agents. Said sums shall include, in the event of legal action, court costs, expenses of litigation, and reasonable attorney's fees. The costs, salary and expenses of any retained counsel and/or the City Attorney and members of his/her office shall be considered as "attorney fees" for the purpose of this paragraph.

10. Warranty

San Bernardino makes no warranty, either express or implied, as to its findings, recommendations, plans, reports, professional advice or other work except that the work was, is, and shall be performed in accordance with generally accepted standards of practice in effect at the time of such performance.

11. Worker's Compensation Insurance

San Bernardino is permissibly self-insured under the Worker's Compensation laws of the State of California and will provide worker's compensation coverage for its employees and will ensure that the employees of any of its subcontractors are covered by worker's compensation insurance in an amount and form to meet all applicable requirements of the laws of the State of California. Colton shall not provide worker's compensation insurance for any San Bernardino employee, agent or subcontractor under any circumstances whatsoever. Furthermore, notwithstanding any other provision set forth herein, Colton shall not indemnify, defend or hold harmless San Bernardino, its officers, employees, agents or subcontractors for worker's compensation claims.

12. Prohibition Against Transfers

San Bernardino shall not assign, sublease, hypothecate or transfer this Agreement or any interest therein directly or indirectly, by operation of law or otherwise without the prior written consent of Colton. Any attempt to do so without said consent shall be null and void, and any assignee, sublessee, hypothecatee or transferee shall acquire no right or interest by reason of such attempted assignment, sublease, hypothecation or transfer.

13. Anti-Discrimination

San Bernardino certifies and agrees that all persons employed by San Bernardino are and will be treated equally by San Bernardino without regard to or because of race, religion, ancestry, national origin, handicap, or sex and in compliance with State and Federal Anti-Discrimination laws.

14. Independent Contractor

San Bernardino shall be an independent contractor and not an employee, nor shall any of its employees, agents or subcontractors be an employee of Colton.

15. Conflict of Interest

- (a) San Bernardino or its employees may be subject to the provisions of the California Political Reform Act of 1974 (the "Act"), which (1) requires such persons to disclose financial interest that may be materially affected by the work performed under this Agreement, and (2) prohibits such persons from making or participating in making decisions that will foreseeable financially affect such interest.
- (b) San Bernardino shall conform to all requirements of the Act. Failure to do so constitutes a material breach and is grounds for termination of the Agreement by Colton.

16. Term

The term of this Agreement shall be for three (3) years, commencing on July 1, 2011 and terminating on June 30, 2014. If a new Agreement has not been negotiated prior to the termination date, then San Bernardino may continue to provide the terms of service in this Agreement for the monthly contract amount of the June 2014 invoice, plus ten percent (10%), for each additional month until a new Agreement is established. In the event a new Agreement is not established by December 31, 2014, San Bernardino's obligations to provide Colton with a comprehensive Animal Care and Control Program shall terminate.

17. Invalidation

In the event any provision of this Agreement shall be held to be invalid and unenforceable, the other provisions of this Agreement shall be valid and binding on the Parties thereto.

18. Notices

A notice required or desired to be given pursuant to this Agreement shall be given in writing and sent by certified mail, return receipt requested, addressed as follows:

City of Colton

City Manager, Rod Foster
650 N. La Cadena Dr.
Colton, CA 92324

City of San Bernardino

City Manager, Charles McNeeley
300 North 'D' Street
San Bernardino, CA 92401

Any notice so given shall be considered served on the other Party three (3) days after the date of mailing. The address for the notice may be changed by giving written notice of such change pursuant to this paragraph.

19. Understanding

There are no understandings or agreements except as expressly stated herein.

20. Attorney Fees

In any litigation relating to this Agreement, the prevailing Party shall be entitled to reasonable attorney fees. The costs, salary and expenses of any in-house counsel, retained counsel and/or the City Attorney and members of his/her office in enforcing this Agreement shall be considered as "attorney fees" for the purpose of this paragraph.

21. Entire Proposal

This contract constitutes the entire Proposal between Colton and San Bernardino and may be modified only by further written agreement between the Parties.

22. Titles and Subtitles Are Merely Precatory

All titles and subtitles appearing in this proposal have been inserted for convenience and shall not be deemed to affect the meaning or construction of any of the terms or provisions of such proposal.

EXHIBIT 1

City of Colton Scope of Services, Schedule and Fees Animal Care and Control Program

1. **City Ordinance**

The City of San Bernardino ("San Bernardino") will provide a comprehensive animal care and control program for the City of Colton ("Colton") under the provisions of the Municipal Code of Colton which prescribes procedures and standards for licensing, impounding, regulation and control of dogs, cats and other domestic and wild animals. The City of Colton shall take all necessary actions to deputize or otherwise make San Bernardino's actions to enforce Colton's municipal codes including any codes contained in any supplemental documents to Municipal Code of Colton related to zoning and development code that also affect animals. Further, Colton will consult with San Bernardino on any proposed new ordinance or ordinance change dealing with animal control matters.

2. **Term**

The term of the Agreement shall be July 1, 2011 through June 30, 2014.

3. **Consideration**

Colton agrees to compensate San Bernardino \$40,492 per month for providing Animal Care and Control services as defined in this exhibit for the period July 1, 2011 through June 30, 2014, including any increase as set fourth in paragraph 2 of the Agreement.

4. **Impound, Care and Disposal of Dogs and other Domestic and Wild Animals**

Subject to any exclusions, San Bernardino will operate an animal care and control program for Colton consisting of the following activities: field services and shelter services. San Bernardino will perform the following specific functions:

- (a) Enforce all provisions of Colton City Ordinances pertaining to animals, to include issuing warning notices or citations as necessary. San Bernardino may also file citations directly with the Court. The City Attorney for Colton will process any legal action and appear in court, as necessary, on animal related cases.
- (b) Impound all animals caught at large and collect all impound fees assessed.
- (c) Remove dead animals from the public right-of-way, except state freeways.
- (d) Respond to requests for assistance in the trapping and removal of domestic animals from public or private property during normal operating hours. San Bernardino will offer advice in setting a trap in any enclosed space and will remove wild animals (not including rodents or insects) caught in a trap or found inside any human dwelling. Animal Control employees shall not be required to

maintain on-premise surveillance unless in the opinion of the Director of Animal Control or designee there is a direct, clear and present danger to human life. San Bernardino will provide traps for nuisance animals upon request.

- (e) Investigate reported animal bites and quarantine, as prescribed by law, all biting animals and animals suspected to be rabid. San Bernardino shall take appropriate steps consistent with the circumstances of each separate incident to locate and impound the suspect animal or animals and or assist the complainant and or injured party or parties to trap the suspected animal or animals.
- (f) Provide euthanasia services as required for animals held for the state-mandated legal holding period if these animals are not reclaimed by their owners and are deemed unsuitable or unavailable by San Bernardino for adoption. All impounded animals will be scanned for microchips. Animals with identification, licenses or microchips will be held up to ten (10) days and attempts will be made to contact the owner.
- (g) Respond to every call for service either by animal control officer, letter or phone, except for excluded items.
- (h) Cats: San Bernardino will not be required to respond to calls of cats running at large, confined stray cats or trapped cats. Traps for the purpose of capturing cats shall be made available to the residents of Colton. Unless exceptional circumstances exist, residents of Colton shall be responsible for obtaining, monitoring and returning all traps used for this purpose.
- (i) All services available to San Bernardino residents for which there is a fee shall be made available to Colton residents for the same fee.
- (j) Colton residents may bring stray, un-owned animals to the San Bernardino shelter at no charge to the resident.

5. Dog Licensing

Colton residents redeeming their dog(s) will be required to pay a license deposit prior to the dog's release. All licensing deposits generated by Colton residents will be accounted for in monthly accounting statements provided to Colton by San Bernardino and remitted by San Bernardino to Colton on a monthly basis.

6. Animal Care Education and Information Program

San Bernardino will provide public educational/information programs to Colton Schools, City employee groups, service groups and other organizations, upon request.

7. Veterinary Services Program

San Bernardino will provide private veterinary services for the care of injured and sick animals that are impounded. The cost of this service is included in the contract price.

8. Staffing Level and Hours of Service

(a) Field Services

San Bernardino will provide routine field services for Colton Monday through Friday between 8:00 a.m. and 5:00 p.m. A more limited service is provided on Saturdays, Sundays and Holidays. Calls to be considered routine and to be handled during the normal course of the officer's shift and include:

- Confined strays
- Dead animals
- Stray dogs running at large
- Humane/Animal Cruelty investigations
- Animal bites
- Wildlife in human dwellings (not including rodents or insects)
- Miscellaneous calls such as pet shop investigations, sanitation complaints, license checks, for-fee pick-ups, courtesy pick-ups, etc.

After hour emergency call-out service is provided daily from 5:00 p.m. to 8:00 a.m. Colton may contact animal control field personnel via emergency pager, for after-hour service. A live after-hour answering service is available for Colton residents.

(b) Shelter Hours and Telephone Line:

The San Bernardino shelter shall be open to the public Tuesday through Saturday from 10:00 a.m. to 5:00 p.m. The shelter will be closed on Sundays, Monday and holidays. The phone lines will be answered by staff during business hours, and a live after-hour answering service is available for emergencies.

(c) Emergency After-Hours Procedures:

The reporting party (RP) will contact the Colton Police/Fire Dispatch, or the City of San Bernardino Animal Control. If the dispatcher deems the call an emergency (see criteria below) the dispatcher will page the on-call animal control officer (ACO). The ACO will contact Colton Dispatch; obtain the RP's name and phone number and follow-up with the RP for additional information. The dispatcher will advise the RP, to remain by a phone for contact by the ACO. Unless requested by Colton, it will not be necessary for the ACO to notify the dispatcher of the disposition of the call. If the emergency response is an agency assist request by Colton Police/Fire, the ACO will automatically respond.

San Bernardino will provide a monthly listing of on-call animal control personnel if requested. San Bernardino will provide personnel to train Colton dispatchers in on-call procedures, as requested.

Criteria for Emergency Call-Out

- ◆ Injured stray animals
- ◆ Loose "aggressive" animals.
- ◆ Animal bites/attacks.

- ◆ Loose livestock if a threat to public safety
- ◆ Other dangerous or Poisonous animal situations posing public safety.
- ◆ Agency Assists for Fire, Police, Sheriff, etc.

Emergency Calls will be responded to within thirty (30) minutes of receipt by San Bernardino when practicable. If the dispatcher determines that the call does not meet emergency call-out criteria, the RP will be instructed to contact animal control during regular business hours. San Bernardino personnel will not respond on an emergency basis to loose animals, dead animals, wildlife, confined strays or owned sick or injured animals.

9. Inspection

Designated personnel from Colton may, at any time during normal business hours, inspect the office, shelter, vehicles and other facilities connected to servicing this Agreement, upon reasonable notice.

10. Reclaimed Animals

Animals reclaimed by their owners will be charged redemption fees in accordance with City of San Bernardino resolutions and applicable state laws. San Bernardino will retain such fees.

10. Exclusions

San Bernardino will not be required to:

- Conduct rabies vaccination and license clinics.
- Provide dog license canvassers.
- Administer and sell Colton dog licenses.
- Handle animal noise complaints.